IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1902 of 2007

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
HAJRABANU W/O SIDIK FARAHIM SURTI - Respondent(s)

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Appearance :
MR MR MENDEY, ADDL. PUBLIC PROSECUTOR for petitioner
None for Respondent(s) : 1,

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/12/2007

ORAL JUDGMENT

1. By this petition under Article 226 and 227 of the

Constitution of India, the petitioner – State of Gujarat challenges the order dated 8th August, 2007 passed by the learned Sessions Judge, Panchmahals, at Godhra in Criminal Revision Application No.31 of 2007.

2. The facts of the case stated briefly are that the respondent herein was arrested in connection with the FIR registered vide Godhra Town Police Station II Cr.R. No. 506/2006 for the offences punishable under Section 3(2)(e), 14 of Foreigners Act, 1946. The respondent moved an application under Section 167(2) of the Code of Criminal Procedure, 1973 (the Code) contending that the investigating officer has not filed the chargesheet within sixty days from the date when he was first produced before the learned Magistrate. The said application was allowed and the respondent was enlarged on bail. Being aggrieved, the petitioner, State of Gujarat carried the matter in revision before the learned Sessions Judge, Panchmahals, at Godhra, who by the impugned order dated 8th August, 2007, rejected the application, giving rise to the present petition.

3. Heard Mr.M.R.Mengdey, learned Additional Public Prosecutor on behalf of the petitioner – State of Gujarat.

4. Mr.M.R.Mengdey, learned Additional Public Prosecutor has contended that the learned Chief Judicial Magistrate had erred in granting default bail to the respondent as the chargesheet was filed within a period of sixty days from the date on which the respondent was presented before the Chief Judicial Magistrate after completion of period of

remand. It was submitted that the period of sixty days has to be calculated from the date when the accused is sent into judicial custody, excluding the days during which he was remanded to police custody. It was, accordingly, submitted that both the Courts below have erred in holding that the chargesheet was not submitted within a period of sixty days as envisaged under the provisions of sub-section (2) to Section 167 of the Code.

5. As can be seen from the impugned order, the respondent was arrested on 22nd November, 2006. He was produced before the learned Chief Judicial Magistrate on 23rd November, 2006 and an order of remand in respect of the respondent was obtained for two days. Thereafter, upon completion of the period of remand, he was presented before the learned Chief Judicial Magistrate on 25th November, 2006. The charge sheet in the present case was submitted on 23rd January, 2007.

6. The main contention on behalf of the State is that the period of sixty days, as envisaged under Section 167(2) of the Code should be reckoned from the date when the respondent was presented before the learned Chief Judicial Magistrate after completion of period of remand. The learned Chief Judicial Magistrate has placed reliance upon a decision of the Supreme Court in the case of ***State of Maharashtra v. Mrs.Bharti Chandmal Varma alias Ayesha Khan***, AIR 2002 SC 285, wherein it has been held that the accused would be entitled to bail, on account of default of the investigating agency to complete investigation within ninety days from the date

of first remand of the respondent. It has, accordingly, been held that calculating the period of sixty days from the date of first remand of the respondent, the chargesheet has been filed after the statutory period of sixty days. The learned Sessions Judge has also come to the same conclusion.

7. In the case of **Chaganti Satyanarayana and others V. State of Andhra Pradesh, (1986) 3 SCC 141**, the learned Magistrate had granted bail to the appellants therein on the ground that the period of 90 days stipulated in the proviso of section 167(2) of the Code had to be reckoned from the date of arrest and not from the date of remand and so computed that the charge sheet had not been filed on the 90th day and on the 91st day and hence, the accused were entitled to bail. The State challenged the order of bail before the High Court by means of a petition under section 439(2) of the Code. A learned Single Judge of the High Court allowed the petition holding that the period of 90 days envisaged by the proviso to section 167(2) has to be computed only from the date of remand and, therefore, cancelled the bail and directed the Magistrate to issue warrants of arrest for the appellants therein. The correctness of the order of the learned Judge was subject matter of challenge before the Supreme Court. The Supreme Court after considering the historical background of the legislative provisions and the objective underlying it and examining section 167 and proviso (a) to sub section (2) held, thus;

> “25. Thus in any view of the matter i.e. construing

proviso (a) either in conjunction with sub-section (2) of section 167 or as an independent paragraph, we find that the total period of 90 days under clause (i) and the total period of 60 days under clause (ii) has to be calculated only from the date of remand and not from the date of arrest."

8. In view of the aforesaid decisions of the Supreme Court, it is amply clear that the question as to what is the starting point from which the period of 90 days or 60 days as the case may be, stipulated in the proviso to section 167 has to be reckoned for the purpose of granting default bail under sub section (2) of section 167 of the Code is no longer *res integra*. As held by the Supreme Court in the decisions cited hereinabove, the period of 90 days has to be calculated from the date of remand and not from the date when the accused is presented before the Magistrate after completion of remand and sent to judicial custody, as is sought to be contended on behalf of the State.

9. Examining the facts of the present case in the light of the aforesaid decisions, the respondent was arrested on 22nd November, 2006; he was produced before the learned Chief Judicial Magistrate on 23rd November, 2006 and an order of remand was made. Therefore, the period of 60 days has to be reckoned from 23rd November, 2006 as rightly calculated by the learned Chief Judicial Magistrate and not from 25th November, 2006 when the accused was presented before the learned Magistrate after completion of remand, as contended on behalf of the State. In the

above view of the matter, it is apparent that the period of 60 days was over before the charge sheet was filed on 23rd January, 2007, hence, the Courts below have rightly held that the respondent accused was entitled to default bail.

10. For the foregoing reasons, the petition fails, and is accordingly, summarily rejected.

[HARSHA DEVANI, J.]

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